

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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**ROLE OF COMMUNITIES IN THE “PROTECTION OF
PLANT VARIETIES AND ASSOCIATED TRADITIONAL
KNOWLEDGE WITH SPECIAL REFERENCE TO THE
PROTECTION OF PLANT VARIETIES AND FARMERS
RIGHTS ACT 2001”**

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Abstract

In India, many Indigenous and local communities have protected the same plant varieties and the associated TK. S.41 of the PPV&FRA 2001 merely mentioned the rights of communities. There are no scientific data regarding the communities and their plant varieties and associated TK in India. As a result, S.41 of the PPV&FRA 2001 failed to fulfil the criteria for reasonable classification mentioned under Art.14 of the Constitution of India. Without a reasonable classification, the PPV&FRA 2001 could not provide rewards in the name of benefit-sharing for the invaluable contribution of local communities to conserve plant varieties and associated TK as part of their way of life. As part of TRIPS commitment, member states shall enact either patent or *sui generis* law to protect the plant varieties. The international paradigm shift in Intellectual Property (IP) has influenced the Protection of Plant Varieties and Farmers' Rights Act (PPV&FRA) of 2001. This shift highlights that the existing IP regime often excludes Indigenous Peoples and local communities, leading to significant exploitation of plant varieties and the traditional knowledge (TK) associated with them. As a result, this situation adversely impacts the livelihoods of traditional farmers, including Indigenous peoples and local communities.

Keywords: Right of communities, S.41 of PPV&FRA, Indigenous people and Local Communities, plant varieties and associated TK, Food security.

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Introduction

The first urban civilization in the Indian subcontinent was located in a broad region in the northwest. The inhabitants of this region were familiar with ploughing and began to incorporate indigenous rainy-season crops like rice and pulses alongside winter-season crops such as wheat, barley, and lentils. Indigenous people and local communities played a vital role in the domestication of plant varieties through their traditional knowledge, which helped them, conserve and adapt these resources to meet their socio-economic needs.³ They maintained a symbiotic relationship with their natural environment, traditional lifestyles, and a deep understanding of their local ecosystem; their traditional knowledge⁴ including agriculture knowledge and farming techniques also maintained sustainable development and environmental balance in a particular region.

In India, Indigenous peoples and local communities⁵ have accumulated extensive knowledge about “plant varieties Plant Varieties and Associated Traditional Knowledge” (Hereinafter called Plant varieties and associated TK) over centuries through traditional knowledge practices that involve trial and error, constant observation, and preservation. They have selected high-yield varieties that are resistant to pests and diseases. India is a biodiversity-based economy.⁶ However, the rapid growth of industrialization, urbanization, and land fragmentation has led to the erosion of the plant varieties and associated TK. According to the Economic Survey 2023-24 presented in the Parliament of India, agriculture provides livelihoods for about 42.3% of the population and contributes 18.2% to the country's GDP.⁷ Furthermore, India has a rich history of both formal and informal seed systems, with the seed industry experiencing an annual growth of around 18000 crores. India ranks third in the global seed industry, with 60% of seeds coming from farm-saved and unlabelled sources.⁸ A remarkable 80% of the seeds

³ Madhava Gadgil and Ramachandra Guha, *The Fissured Land: An Ecological History of India*, (1st Edition, Oxford University Press, 1992)

⁴ Traditional Knowledge hereinafter called TK which means that knowledge, know-how, skills, and practices are developed, sustained, and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

⁵ Indigenous Peoples and Local Communities | IPBES Secretariat' ([www.ipbes.net](https://www.ipbes.net/glossary-tag/indigenous-peoples-and-local-communities))<<https://www.ipbes.net/glossary-tag/indigenous-peoples-and-local-communities>> accessed on 25 February 2025.

⁶ Peter Drahos, *Intellectual property: The international Library of Essays in Law and Legal Theory* (second series, Dartmouth Publishing Company Limited, 1999) .

⁷ PIB Delhi, 'Agriculture Sector Has Registered An Average Annual Growth Rate Of 4.18 Per Cent Over The Last Five Years : Economic Survey' (*Pib.Gov.In* 2014) <<https://Pib.Gov.In/Pressreleasepage.aspx?PRID=2034943>> accessed on 18 February 2025.

⁸ R.R.Hanchinal and Raj Ganesh, *Protection of Plant Varieties and Farmers Rights Law Practice and*

used by farmers still originate from farmers' supply systems.

In the post-TRIPS era, India has adopted an ethical approach to protecting plants and seeds. Due to socio-political factors, India did not sign 'The International Union for the Protection of New Varieties of Plants (UPOVs)'.⁹ The UPOVs 1961, 1972, 1978 and 1991 conventions primarily protect the rights of breeders under a *sui generis* system. As a signatory to the TRIPS Agreement, India chose the *sui generis* approach and enacted the Protection of Plant Varieties and Farmers Act, 2001 (Hereinafter called PPV & FRA).

The Indian version of the Plant Breeders' Rights (PBR) regime, codified by the PPV & FRA, offers extensive protection for varieties developed by various innovators in both formal and informal sectors and recognizes farmers' rights.¹⁰ The law safeguards the rights of breeders, farmers, and local communities. S. 41 of the PPV & FRA, aims to empower rural and tribal women and men who have engaged in centuries-old practices of conservation, protection, sustainable use, and local and Indigenous innovation.¹¹ The Act also provides for rewards in the form of benefit-sharing to acknowledge the invaluable contributions of local communities in conserving the plant varieties and associated TK through the selection and identification of their value in medicine, agriculture, and other fields. Additionally, a national gene and biodiversity fund has been proposed to offer financial rewards and economic support to farmers involved in these practices.¹² In contrast, conventional Intellectual Property Rights (IPR) philosophy often assumes that traditional knowledge exists in the public domain. The state should recognize the significant contributions made by indigenous People and local communities in maintaining the informal seed system through their traditional knowledge.

International regulatory framework for plant variety protection

UPOVs is an intergovernmental organization located in Geneva, Switzerland, established by the International Convention for the Protection of New Varieties of Plants. This Convention was adopted in Paris in 1961 and has undergone revisions in 1972, 1978, and 1991. UPOVs

Procedure(ISBN-No : 978-8171773374, Eastern Law House private LTD, 2018)

⁹ UPOV, 'International Union for the Protection of New Varieties of Plants (UPOV)' (www.upov.int2011) <<https://www.upov.int/portal/index.html.en>> accessed on 21 February 2025

¹⁰ Mrinalini Kochupillai, 'Is UPOV 1991 a Good Fit for Developing Countries?' (2018) SSRN Electronic Journal <SSRN: <https://ssrn.com/abstract=3119652> or <http://dx.doi.org/10.2139/ssrn.3119652>>accessed on 20 February 2025.

¹¹ M.S.Swaminathan Research Foundation, 'Farmers's Right and Biodiversity: A Gender and Community Perspective' (Proceeding of a Workshop ,Chennai,27,28,February 2003)

¹² Protection of Plant varieties and Farmer's Right (Recognition and Reward from the Gene Fund) Rules 2012, **R.2,3,4**

aims to 'promote an effective system for plant variety protection and to encourage the development of new plant varieties that benefit society'. However, UPOVs needs improvement to better protect medicinal plant biodiversity and the rights of indigenous medical practitioners who rely on biodiversity.¹³ Meanwhile, UPOVs are designed to safeguard crops and the rights of industrial seed breeders. The TRIPS agreement is not mentioned anywhere that a *sui generis* system has to be UPOV.¹⁴ Article 27(3)(b) of the TRIPS Agreement stipulates that "members shall provide for the protection of plant varieties either by patents, by an effective *sui generis* system, or by any combination thereof". India ratified the TRIPS Agreement and subsequently provided for the protection of plant varieties in line with its provisions. The country also 'signed and ratified the International Treaty on Plant Genetic Resources for Food and Agriculture (Hereinafter called ITPGRFA)' following Cabinet approval on June 10, 2002. In 2004, the ITPGRFA was enacted to protect farmers' rights. Article 9 of the ITPGRFA acknowledges the significant contributions of indigenous Peoples and Local communities and farmers in conserving and developing plant genetic resources. This includes their vital role in centres of origin and crop diversity, as well as their essential importance to modern food and agricultural production, both historically and in the future.¹⁵

Nature and scope of the term Indigenous Peoples and Local Communities

The term "indigenous" is broad and can be referred to in different ways depending on the country. In some regions, these groups are called "tribes," "First Peoples," "Aboriginals," or "ethnic groups." Other designations may include occupational or geographical terms such as "hunter-gatherers," "nomads," "hill people," or "peasants." etc.¹⁶ Indigenous peoples are generally recognized as groups that have inhabited specific geographical areas since time immemorial.¹⁷ They have lived on their lands, and their cultural values are interlinked and maintained with their land. Indigenous people have protected their environment and kept their

¹³ Peter Drahos, *Intellectual property, The international Library of Essays in Law and Legal Theory*(second series,1999,Dartmouth Publishing Company Limited,1999)

¹⁴ *ibid*

¹⁵ Gerald Moore and Witold Tymowski, 'Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture' (*Google.com2024*) < <https://www.google.com/search?client=firefox-b&q=Explanatory+Guide+to+the+International+Treaty+on+Plant+Genetic+Resources+for+Food+and+Agriculture+Gerald+Moore+and+Witold+Tymowski>> accessed 13 April 2025.

¹⁶ TC James, 'International Discussions on Indigenous People and India RIS Discussion Paper Series' (29 December 2022) <https://www.researchgate.net/publication/366668991International_Discussions_Indigenous_people_India_RIS_Discussion_Paper_Series>accessed 30 January 2025

¹⁷ It includes: (a). Historical continuity, i.e., they are pre conquest/colonization societies; (b). Territorial connection (their ancestors inhabited the country or region); (c). Distinct social, economic, cultural and political institutions (they retain some or all of their own institutions)

traditions alive for centuries.¹⁸

The International Labour Organization's (ILO) Convention concerning “Indigenous and Tribal Peoples in Independent Countries (No. 169)” distinguishes between tribal and indigenous peoples by emphasizing the importance of self-identification and the protection of their livelihoods.¹⁹ Tribal peoples within independent countries have unique social, cultural, and economic conditions, often regulated by their customs, traditions, or special laws. The United Nations Declaration on the Rights of Indigenous Peoples (Hereinafter called UNDRIP), adopted in 2007, recognizes the inherent collective rights of indigenous peoples, including socio-political and economic rights.²⁰

At the international level, the terms "Indigenous Peoples" and "local communities" can be summarized as groups characterized by cultural diversity and collective rights over ancestral territories, based on self-identification, historical continuity, and traditional knowledge and practices. However, existing international intellectual property law does not sufficiently address the concept of collective ownership of this property.²¹ In contrast, India has taken the position that all Indians are considered indigenous peoples.²² However, it is important to recognize that not all Indians possess collective rights over territorial land, customary practices, seed genetic resources, the plant varieties and associated TK derived from indigenous knowledge systems.

The role of Indigenous Knowledge in the protection of plant varieties

The term Indigenous knowledge is often used interchangeably with traditional knowledge. This broader term encompasses several concepts, including “Indigenous knowledge”(IK), “Ethnoecology”, “local knowledge”, “Indigenous technical knowledge” (ITK), “folk knowledge”, “traditional environmental knowledge” (TEK), and “Indigenous

¹⁸Margaret Bruchac, ‘Indigenous Knowledge and Traditional Knowledge’ (2014) <<https://core.ac.uk/download/pdf/219378082.pdf>>accessed 18 February 2025

¹⁹ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169) (Ilo.org2024) <https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE%2CP55_LANG%2CP55_DOCUMENT%2CP55_NODE:REV%2Cen%2CC169%2C%2FDocument>accessed 1 March 2025

²⁰ UN Declaration on the Rights of Indigenous People <https://www.un.org/development/desa/Indigenous-peoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>accessed on 15 March 2025

²¹ Leaflet No. 12: WIPO and Indigenous Peoples, United Nations Human Rights, ‘OHCHR | Home’ (Ohchr.org2019) <<https://www.ohchr.org>> accessed 10 January 2025

²² IWGIA, ‘India - IWGIA - International Work Group for Indigenous Affairs’ (www.iwgia.org) <<https://www.iwgia.org/en/india.html>>.accessed on 5 th February 2025

science”.²³ Indigenous knowledge refers to the expressions, practices, beliefs, understandings, insights, and experiences of Indigenous peoples and local communities. It has been tested, enhanced, and refined through generations of land-based practices.²⁴

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)²⁵ aids Indigenous People and local communities in safeguarding their plant varieties. However, India ratified the ITPGRFA without conducting scientific studies or data analysis on these communities, their plant varieties, and the traditional knowledge that originates from their unique knowledge systems. Section 41 of the PPV&FRA mentions the term "community," but it is not defined within the statute itself. Additionally, it does not acknowledge the immense contributions made by Indigenous peoples and local communities in protecting plant varieties through their Indigenous knowledge system.

Indigenous peoples and local communities have developed unique farming practices by incorporating indigenous knowledge derived from their local environments. Indigenous agricultural expertise is vital for sustainable development and includes customs, tools, and knowledge that have been passed down through generations.²⁶ Indigenous Technical Knowledge (ITK) provides several traditional technologies, such as rainwater measurement using traditional rain gauges, basins with grass mulch, and micro-depressions for water retention after rainfall. These techniques help maintain soil fertility and ensure food security each season. Indigenous communities leverage natural products and processes from their surroundings to address agricultural challenges and related activities.²⁷ A fundamental principle of traditional Intellectual Property law is to incentivize individual innovation and technical advancement only. However, the state has neither recognized nor protected existing Indigenous innovations related to plant varieties in the enactment of the PPV&FRA.

²³ Ryser, Rudolph C, 'Indigenous and Traditional Knowledge' (Academia.edu June 2012) <https://www.academia.edu/7219889/Indigenous_and_Traditional_Knowledge> accessed 9 January 2025.

²⁴ Sam Grey, '(PDF) Indigenous Knowledge' (ResearchGate January 2014) <https://www.researchgate.net/publication/303994407_Indigenous_Knowledge> accessed 18 January 2025

²⁵ 'International Treaty on Plant Genetic Resources for Food and Agriculture | Food and Agriculture Organization of the United Nations' (www.fao.org) <<https://www.fao.org/plant-treaty/en/>>. accessed on 11 February 2025

²⁶ Pujasmita Behera and Kumar Ashutosh, 'Role of Indigenous Technical Knowledge (ITKs) in Sustainable Agriculture' (20 December 2024) 167 <https://www.researchgate.net/publication/387261051_Role_of_Indigenous_Technical_Knowledge_ITKs_in_Sustainable_Agriculture> accessed on 12 February 2025

²⁷ Ashish Anand And Others, 'Association Between Socio-Economic Condition And Knowledge Level Of Indigenous Technical Knowledge (ITK) By Rural Farm Families In Sampatchak Block In Patna District Of Bihar' (2021) 8 International Journal Of Advances In Agricultural Science And Technology 170 <<https://core.ac.uk/download/539854527.pdf>> on 12 February 2025

Understanding Community Rights to the Plant Varieties and Associated Tk.

The Center for International Environmental Law (CIEL) in Washington has coined the term "Community-Based Intellectual Property Rights" (CBIPRs). This concept serves as a valuable framework for controlling and managing natural resources held by communities.²⁸ CBIPRs are communal rights that local communities possess over their cultural assets, which include traditional songs, crafts, sculptures, dances, plant varieties, and the knowledge associated with these elements. These cultural assets are vital for the livelihoods of local communities.²⁹ CBIPRs do not promote the commodification of biogenetic resources owned by communities. Any decision regarding the sale or transfer of these rights is approached from the perspective of community rights.³⁰

In fact, Indigenous peoples have been protected plant varieties and associated TK through indigenous innovations rooted in their indigenous knowledge systems, which are holistic and deeply connected to the relationships of land, time, and place. To protect the former, one must recognize the rights of the latter.³¹ Indigenous knowledge is produced collectively, evolving as it adapts to and builds upon existing knowledge over time, while conventional innovation concepts are typically analyzed at an individual level.³² The UNDRIP acknowledges that indigenous peoples possess collective rights. These rights include recognition of their unique histories, languages, identities, cultures and Intellectual property. Additionally, it affirms their 'collective right to the lands, territories, and natural resources they have traditionally occupied and used, as well as the right to their collectively held traditional knowledge'.³³

In India, the collective rights of Indigenous peoples and local communities are not explicitly recognized in the constitution. Unfortunately, India ratified the ITPGRFA and the UNDRIP

²⁸ ibid

²⁹ ibid

³⁰ ibid

³¹ Susy R Frankel and Peter Drahos, 'Indigenous Peoples' Innovation and Intellectual Property: The Issues' [2012] SSRN Electronic Journal. <SSRN: <https://ssrn.com/abstract=2138657> or <http://dx.doi.org/10.2139/ssrn.2138657>>

accessed 25 January 2025

³² Peter Drahos, *Intellectual property, The international Library of Essays in Law and Legal Theory* (second series Dartmouth Publishing Company Limited, 1999)

³³ Indigenous peoples' collective rights to lands, territories and natural resources Lessons from IFAD-supported projects, 'Topics' (*World Bank*) <<http://www.worldbank.org/en/topic/>> accessed on 13 February 2025

without acknowledging the fundamental concept of collective property, which is essential to Indigenous peoples and local communities. As a result, they face challenges in protecting their customary ownership rights over land and plant varieties, as well as associated traditional knowledge. This includes their 'right to participate in the rule-making process, their right to monitor and control access to resources, their right to receive fair benefits from the utilization of plant varieties and associated traditional knowledge, and their right to prevent the misappropriation of these resources and knowledge'.

Rights of Communities under the PPV and FRA 2001

The protection of plant varieties and breeders' rights are considered the species of IPR that evolved from UPOV-1991 and TRIPS obligation under Art.27.3 (b).³⁴ The main intention of the legislature is to initiate 'an effective system for the protection of plant varieties and ensure safety for the rights of farmers and breeders', thereby promoting the development of new varieties of plants. A variety is distinct from all other known varieties by one or more botanical characteristics.³⁵ The primary stage of the PPV & FRA discussion focused only rights of the breeders, as in UPOV-1991. Unfortunately, the PPV&FRA could not recognise Community-Based Intellectual Property Rights (CBIPRs) held by the Indigenous people and local communities for protecting plant varieties or collective property rights followed by the UNDRIP or ITPGRFA conventions.

The UPOV 1991 enhanced the protection of newly bred plant varieties only, which satisfies the conditions of distinctiveness, uniformity, and stability (DUS).The PPV&FRA also contemplates the different standards of distinctiveness, uniformity, and stability for extant varieties. In India, farmers' variety³⁶ has been exempted from the DUS test. The legislative intention of the Parliament was to classify two categories of farmers' varieties: i.e. (i) extant farmers' Varieties and (ii) other farmers' Varieties. The first category would fulfil the different standards of the DSU test, and the second category is VCK, which is exempted from the DSU test because it would not be identifiable with a specific person or community but existed from

³⁴ TRIPS, Art 27.3 (b) enhance the protection of plant varieties, either by patent, by effective *sui generis* system, or by combination thereof. It protects the rights of farmers and breeders.

³⁵ M Blakeney, 'Patenting of Plant Varieties and Plant Breeding Methods' (2012) 63 Journal of Experimental Botany 1069.<<https://academic.oup.com/jxb/article/63/3/1069/47304>> accessed 25 February 2025.

³⁶ S.2(l) of the PPV&FRA says that, Farmers's variety means a variety which-(i). has been traditionally cultivated and evolved by the farmers in their fields; or (ii) is a wild relative or land race of a variety about which the farmers possess the common knowledge.

time immemorial.³⁷ The DSU test is based on morphological examination; it may be supplemented by special tests and biochemical/molecular characteristics, particularly in the case of GM varieties.³⁸ Under PPV&FRA, plant varieties can be registered under four categories: Extant variety,³⁹ farmer's variety,⁴⁰ and essentially derived varieties and new varieties.⁴¹ As per the statute, two types of extant varieties were notified under the Seeds Act 1966,⁴² and extant varieties that existed in the common Knowledge (VCK). The PPV&FRA, also enhanced a separate registration of farmers' variety, which evolved as wild relative, landrace, and variety, possessing common Knowledge.⁴³

The PPV&FRA incentivizes the rights of the breeders and also ensures exclusive control for a specific period, encouraging technological growth and innovation in the agricultural sector.⁴⁴ S.39(iii) of the PPV&FRA mentioned that a farmer 'who is engaged in the conservation of genetic resources of land races and wild relative of economic plants and their improvement through selection and preservation shall be entitled to get a reward from the Gene Fund'. He shall be deemed to be entitled to 'save, use, sow, re-sow, exchange, share or sell his farm produced seed' under this Act. The '*sui generis* system has protected plant varieties developed by the breeders, farmers, and village communities through their centuries-old agricultural practices'. It has also ensured equitable sharing of benefits for their contribution to protect and

³⁷ Prof. (Dr.) N.S. Gopalakrishnan, 'Problems with the Indian Plant Varieties Regime: Old Vine in Newly "Enclosed" Bottle?' Spicy IP ,6 th July 2018<<https://spicyip.com/2018/07/problems-with-the-indian-plant-variety-regime-old-vine-in-newly-enclosed-bottle.htm>> accessed 12 th February 2025

³⁸ Anupam Mishra, A Misra and Nirmali Borthakur, 'Role of Organizations in Protecting Plant Varieties and Farmers' Rights' <https://www.kiran.nic.in/pdf/publications/ppv_barapani.pdf> accessed 9 April 2025..

³⁹ PPV&FRA,2001,S.2.(j) "extant variety" means a variety available in India which is—(i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or (ii) farmers' variety; or (iii) a variety about which there is common knowledge; or (iv) any other variety which is in public domain.

⁴⁰ PPV&FRA,2001,S.2(l) "farmers' variety" means a variety which—(i) has been traditionally cultivated and evolved by the farmers in their fields; or (ii) is a wild relative or land race of a variety about which the farmers possess common knowledge.

⁴¹ PPV&FRA,2001, S.2 (i) "essentially derived variety", in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it—(i) is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that results from the genotype or combination of genotype of such initial variety;(ii) is clearly distinguishable from such initial variety; and (iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety.

⁴² Seed Act 1966, S.2(16) Define "variety", as a sub-division of a kind identifiable by growth, yield, plant, fruit, seed, or another characteristic.

⁴³ Prof. (Dr.) N.S. Gopalakrishnan, 'Problems with the Indian Plant Varieties Regime: Old Vine in Newly "Enclosed" Bottle?'(2018) Spicy IP ,6 th July 2018 <<https://spicyip.com/2018/07/problems-with-the-indian-plant-Variety-regime-old-vine-in-newly-enclosed-bottle.htm>> accessed 12 th July 2024.

⁴⁴ P A Lakshmi Prasanna, L V Subba Rao etc., 'Intellectual property rights protection for plant varieties in India: status, emerging issues, and challenges',Agricultural Economics Research Review(2019), 259-270

conserve the plant varieties. India enacted PPV&FRA to safeguard the *sui generis* system, but it does not recognize the plant varieties and associated TK and innovations by the indigenous people and local communities at the local level.

The Dilemma of Rights of Communities under PPV and FRA 2001

In India, community rights have not been formally recognized by any statute. In 1935, property rights received constitutional protection for the first time.⁴⁵ Historically, in ancient India, property rights were acknowledged and safeguarded by moral laws primarily derived from the state. During British rule, the concept of the rule of law was introduced, which established a system of legally enforceable rights and uniform taxation. This led to many local farming communities losing their land rights during that period.⁴⁶

Section 41 of the PPV&FR Act 2001⁴⁷ addresses the rights of communities, stating that any individual or group, whether actively engaged in farming or not, as well as any government or non-governmental organization, has the right to file applications on behalf of local or village communities. The fundamental premise of Section 41 is to protect the rights of Indigenous peoples and local communities. These communities have long safeguarded plant varieties and associated traditional knowledge through centuries-old practices, utilizing methods of trial and error and artificial selection to ensure food security. Many of these communities have cultural norms that discourage the commodification of living organisms and the fragmentation of knowledge for economic gain. Importantly, collective rights over plant varieties and traditional knowledge come with responsibilities, as all members govern the use, management, and development of these assets based on communal ownership.⁴⁸ The issue of responsibility for managing and developing community assets is crucial at the local level, a private NGO or an individual who does not adhere to the concept of collective property or is not engaged in farming can claim protection under S.41 of the PPV&FRA without observing community norms and responsibilities.

⁴⁵ H.M. Jain, *Right to Property under The Indian Constitution*, (1st edn, Chaitanya Publishing House, Allahabad 1968)

⁴⁶ *ibid*

⁴⁷ PPV&FR Act, 2001, S.41, Rights of communities.—(1) Any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may, on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government, by the Authority, in the Official Gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

⁴⁸ Mercelin Tonye Mahop, *Intellectual Property, Community Rights and Human Rights* (first edition, Routledge 2010)

It is assumed that Intellectual Property law is evolving to address the changing patterns of economic growth and innovation. In this context, a third party can obtain rights over plant varieties held by Indigenous peoples and local communities without providing for benefit-sharing under the PPV&FRA. This situation is often referred to as the "romance of the public domain," which allows outsiders to exploit the rich diversity of plants found in the Indian subcontinent, derived from Indigenous innovations. Additionally, while Section 41 of the PPV&FRA mentions "rights of communities," it fails to define the terms "community" and "rights of communities" within the Act or any related statute in India. Legally, "rights" refer to the advantages individuals possess when there is general consensus or at least acquiescence regarding their actions or inactions. Disapproval arises when someone interferes with another's ability to act according to their wishes or when they refuse to act accordingly.⁴⁹ The phrase "rights of communities" under Section 41 of the PPV&FRA lacks precise definitions and adequate data about communities in India. Statutory interpretation views legislation as an edict, requiring precise terminology to ensure clarity. Definitions within a statute should promote consistency and uniformity while avoiding ambiguity in interpreting Parliament's legislative intent. Justice Gajendragadkar emphasized that the legislature's intent must be discerned from the language used.⁵⁰

Hence, S.41 of the PPV&FRA 2001 failed to fulfil the criteria for reasonable classification mentioned under Art.14 of the Constitution of India. Without a reasonable classification, the PPV&FRA 2001 could not provide rewards in the name of benefit-sharing for the invaluable contribution of local communities to conserve plant varieties and associated TK as part of their way of life. In summary, while Section 41 of the PPV&FRA mentions "rights of communities," it does so vaguely and without clearly defining these terms or providing sufficient data or list of the communities in India. Consequently, it fails to ensure clarity or provide adequate protection for community rights and there is a pressing need for greater recognition and explicit definitions to protect these interests effectively.

The Impact of PPV&FRA on Community Rights over Plant Varieties and Associated Traditional Knowledge

⁴⁹ N.R.Madhava Menon, *Holland on Jurisprudence* (Thirteenth Edition, Indian Economy reprint 2011, Universal law publishing Co)

⁵⁰ Guru Prasanna Singh, *Principles of Statutory Interpretation* (Eleventh Edition, Wadhwa and Company Nagpur, 2008)

The economic rationale behind the PPV&FRA enhances the participation of the private sector in developing new plant varieties. This legislation offers exclusive protection for breeders⁵¹ and farmers.⁵² The primary purpose of registering plant germplasm is to ensure that trait-specific germplasm is publicly accessible and that information is shared in a manner that facilitates the development of new plant varieties. In India, the PPV&FRA protects the rights of both farmers and breeders. Consequently, anyone can register existing varieties under Section 2(j) of the Act, as specified in Section 2(j)(iii) of the PPV&FRA, 2001.

Section 41 of the PPV&FRA protects the rights of individuals but fails to acknowledge the rights of communities and their CBIPRs. Furthermore, the PPV&FRA of 2001 grants guardian powers to non-governmental organizations (NGOs) for protecting community rights. This provision undermines the legislative intent to safeguard community rights, as the exclusive individual rights granted to a particular person or NGO could curtail the collective rights held by different communities in India. For instance, plant variety protection rights have been awarded to the M.S. Swaminathan Foundation, despite many indigenous and local communities having also preserved the same plant varieties and associated TK.

In reality, India has not aligned its practices with international standards or considered customary practices in identifying indigenous peoples and local communities or collective property notion followed by the UNDRIP or ITPGRFA conventions. Consequently, the collective rights to plant varieties and associated TK resources are adversely affected, violating widely accepted international norms. Many indigenous cultural groups at the international level have advocated for new forms of intellectual property protection to prevent MNCs from exploiting traditional knowledge without respecting the dignity and integrity of these groups.⁵³

Conclusion

⁵¹ S.2(c) of the PPV&FRA says that, breeder means a person or group of person or a farmer or group of farmers or any institution which has bred, evolved or developed any varieties.

⁵² The term farmer under S.2k (iii) of the PPV & FRA 2001 says that 'Farmer' means any person who conserves and preserves plant varieties severally or jointly, held by any person, any wild species or traditional varieties, or adds value to such wild species or traditional varieties through selection and identification of their valuable properties. Novel, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country.

⁵³ Siva Vaidhyathan, *Intellectual property a very short Introduction* (First Edition, Oxford University Press, 2017)

The PPV&FRA, 2001 neither recognised nor represented the collective community efforts of communities to preserve, conserve, and protect different plant varieties from time immemorial. Individual ownership over VCK will restrict the right to use VCK held by the different traditional farming communities from time immemorial. Most of the plant varieties are protected by the Indigenous people and local community through their Knowledge associated with TK agricultural knowledge. S.41 of the PPV&FR Act needs to be more practical in order to protect the rights of the communities in India. However, in a practical sense, it has benefited individual farmers and MNCs. This will also lead to the erosion of biodiversity, harvest loss, and further food security. Plant variety protection will benefit commercial breeders and not farmers or traditional communities in India. The legislature intends to protect the 'rights of farmers and breeders to encourage the development of new varieties of plant varieties and also recognize and protect the rights of farmers concerning their contribution made at any time in conserving, improving, and making available plant varieties and associated TK'. At the same time, there is a lack of scientific data regarding plant varieties and associated TK held by the communities. The lack of clarity in the definition clause dealing with plant varieties and associated TK held by the communities under PPV&FRA 2001 will adversely affect traditional farming communities and their right to livelihood in India.

The logo of IJLRA is a large, light blue watermark centered on the page. It features a stylized emblem at the top with three vertical bars and two curved shapes on either side, resembling a traditional Indian architectural element. Below the emblem, the letters 'IJLRA' are written in a bold, sans-serif font.